

ARTICLE 12 - OTHER CONDITIONS OR SERVICES AIA B101-2007

OWNER: _____
 PROJECT NUMBER: _____
 PROJECT NAME: _____
 PROJECT LOCATION: _____

 PROCUREMENT OFFICER: _____

ARTICLE 12 SECTION 12.1 AIA Document B101-2007, "Standard Form of Agreement Between Owner and Architect," is hereby modified by addition to, change of, and/or deletion from existing clauses and/or insertion of additional clauses as follows:

After the space for inserting the name and address of the Owner on the first page, insert the following:

The Owner is a Governmental Body of the State of South Carolina as defined by Title 11, Chapter 35 of the South Carolina Code of Laws, as amended,

ARTICLE 1 INITIAL INFORMATION

1.2 *Delete Section 1.2 and substitute the following:*

The Owner's anticipated dates for Substantial Completion of the construction Work is:

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

2.2 *Delete Section 2.2 and substitute the following:*

2.2 The Architect shall perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Architect shall notify Owner in a prompt and timely manner of any discovered discrepancies, inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Any designs, drawings or specifications prepared or furnished by Architect that contain errors, conflicts or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance, use of or payment for all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder.

2.3 *Delete Section 2.3 and substitute the following:*

2.3 The Architect's representative identified in Section A.2.4 of Exhibit A shall be authorized to act on behalf of the Architect with respect to the Project. The Architect shall not change the designated representative without the Owner's written consent, which consent the Owner shall not unreasonably withhold.

2.3.1 *Add Section 2.3.1 as follows:*

2.3.1 The Architect shall not change its Consultants identified in Section A.2.5 of Exhibit A without the Owner's written consent, which consent the Owner shall not unreasonably withhold.

2.5 *Delete Section 2.5 and substitute the following:*

2.5 INSURANCE COVERAGES

2.5.1 Architect shall procure and maintain in effect during the term of this Agreement the insurance coverages described below, which insurance shall be placed with insurance companies authorized to do business in the State of South Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved by Owner.

.1 Professional Liability Errors and Omissions Insurance including contractual liability coverage with limits of not less than \$1,000,000 per claim and in the aggregate. Architect shall maintain this coverage in effect during the term of this Agreement and for two (2) years after the Date of Substantial Completion. Architect shall give prompt written notice to Owner of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Agreement.

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.2 Worker's Compensation Insurance with statutory benefits and limits which shall fully comply with all State and Federal requirements and have limits not less than \$500,000 per accident, \$500,000 per disease and \$500,000 policy limit on disease.

.3 Comprehensive Automobile Liability Insurance (owned, hired, and non-owned vehicles) with limits not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

.4 Commercial General Liability Insurance. A broad form Commercial General Liability Insurance Policy including, without limitation and appropriate endorsements adding the following coverages: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability; Personal Injury Liability (with employee and contractual exclusions deleted); Broad Form Property Damage Liability. The Commercial General Liability Insurance Policy must be written on an occurrence basis with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$1,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$1,000,000 for Completed Operations and Products Liability.

2.5.2 INSURANCE REQUIREMENTS FOR SUBCONSULTANTS

Architect agrees to require Subconsultants to comply with the insurance provisions required of Architect pursuant to this Agreement unless Architect and Owner mutually agree to modify these requirements for Subconsultants whose work is of relatively small scope. Architect agrees that it will contractually obligate its Subconsultants to advise Architect promptly of any changes or lapses of the requisite insurance coverages and Architect agrees to promptly advise Owner of any such notices Architect receives from its Subconsultants. Architect agrees that it will contractually obligate its Subconsultants to indemnify and hold harmless Owner to the same extent that Architect is required to do so as provided in this Agreement. Architect assumes all responsibility for monitoring Subconsultant contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until substantial completion of the Project.

2.5.3 ADDITIONAL INSURANCE REQUIREMENTS

Architect shall not make changes in or allow the required insurance coverages to lapse without Owner's prior written approval thereto. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Architect fail to provide and maintain certificates as set forth herein, Owner shall have the right, but not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Architect, or to seek reimbursement for said payments from Architect. Any sums paid by Owner shall be due and payable immediately by Architect upon notice from Owner. Receipt and review by Owner of any copies of insurance policies or insurance certificates shall not relieve Architect of his obligation to comply with the insurance provisions of this Agreement. The insurance provisions of this Agreement shall not be construed as a limitation on Architect's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

2.5.4 ENDORSEMENTS & ADDITIONAL INSURED

2.5.4.1 All policies for insurance must be endorsed to contain a provision giving Owner a (10) days prior written notice of cancellation of that policy for non-payment of premiums and a thirty (30) day prior written notice by certified mail of any cancellation or nonrenewal of that policy (including individual coverages of the policy, or any reduction in policy limits) for any other reason.

2.5.4.2 Prior to performing services, and thereafter upon replacement of each required policy of insurance, Architect shall provide to the Owner a written endorsement to the Architect's general liability insurance policy that (i) names the Owner as an additional insured, (ii) provides that no cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless all additional insureds have been given at least ten (10) days prior written notice of cancellation for non-payment of premiums and thirty (30) days prior written notice of cancellation for any other reason, and (iii) provides that the Architect's liability insurance policy shall be primary, with any liability insurance of the Owner as secondary and noncontributory. Prior to performing services, and thereafter upon renewal or replacement of each required policy of insurance, Architect shall provide to the Owner a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for written notice prior to cancellation as set forth in Section 2.5.4.2(ii), name the Owner as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. Both the certificates and the endorsements must be received directly from either the Architect's insurance agent or the

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insurance company. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Architect with reasonable promptness.

2.6 *Add the following Section 2.6:*

2.6 INTELLECTUAL PROPERTY INDEMNITY

Without limitation and notwithstanding any other provision in this agreement, Architect shall, upon receipt of notification, defend and indemnify the Indemnitees against all actions, proceedings or claims of any nature (and for all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving Intellectual Property (IP) rights related to the Instruments of Service. Architect's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Architect's compliance with a detailed, exact statement of particulars (such as a statement prescribing materials, dimensions, and quality of work) furnished by the State unless Architect knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Architect's compliance with a detailed, exact statement of particulars furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Architect and failed to identify such product to Architect. State must reasonably cooperate with Architect's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, may allow Architect sole control of the defense, so long as the defense is diligently and capably prosecuted. State may participate in the defense of any action. Architect's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. "IP rights" means any rights protected by the laws governing patents, copyrights, trademarks, trade secrets, or any other proprietary rights. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the forgoing.

2.7 *Add the following Section 2.7:*

2.7 THIRD PARTY INDEMNIFICATION

Without limitation and notwithstanding any provision in this agreement, the Architect shall indemnify and hold harmless the Indemnitees for and against claims, damages, losses and expenses (including attorneys' fees) asserted by a third party against an Indemnitee arising out of or resulting from negligent acts or omissions of the Architect, a consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). Architect shall not be required to indemnify an Indemnitee to the extent Indemnitee's damages result from Indemnitee's own negligence. Such obligation shall not be construed to negate, abridge, or reduce any other rights, including any other obligations of indemnity, which would otherwise exist as to a party or person described in this Section 2.7. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the forgoing.

2.8 *Add the following Section 2.8:*

2.8 DECISIONS BY THE ARCHITECT

Any reference in the Contract Documents to the Architect taking action or rendering a decision with a "reasonable time" or "reasonable promptness" is understood to mean no more than fourteen days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

3.1 *Delete Section 3.1 and substitute the following:*

3.1 The Architect's Basic Services consist of those services described in Article 3 and those services identified elsewhere in this Agreement as Basic Services. Architect's Basic Services include usual and customary civil, structural, mechanical, fire protection, and electrical engineering services. Services not set forth in Article 3 or identified elsewhere in this Agreement as Basic Services are Additional Services.

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3.1.3 *Delete the first sentence of Section 3.1.3 and substitute the following:*

As soon as practicable after the date of this Agreement, but not later than 15 days after execution of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services.

3.1.6 *Add the following sentence to the end of Section 3.1.6:*

The Architect's assistance shall include preparation of all necessary applications and submittals.

3.1.7 *Add the following Section 3.1.7:*

3.1.7 In the performance of its duties under this agreement, the Architect shall comply with (a) the requirements of Chapter 5 and Appendix A of the South Carolina Manual for Planning and Execution of State Permanent Improvement Projects – Part II (the "Manual"), and (b) the South Carolina Consolidated Procurement Code and the associated regulations. Should substantive changes to these provisions of the Manual occur during the term of this agreement that result in an increase or decrease in the level of services to be provided by the Architect, the fee of the Architect shall be equitably adjusted by negotiation between the parties to reflect such increase or decrease.

3.1.8 *Add the following Section 3.1.8:*

3.1.8 The Architect's Basic Services include the following:

- .1** Consistent with Section 5.4 (Owner provided info), the Architect shall review and evaluate the information provided by the Owner and advise the Owner of any additional information required by the Architect for completion of the Project.
- .2** The Architect shall provide a preliminary seismic evaluation of the structures in accordance with Chapter 5 of the Manual.
- .3** The Architect shall provide Estimates of Construction Cost and obtain the Owner's written approval of the cost estimate at each phase of design.
- .4** The Architect shall provide the Owner with Record Plans, as required in Section 3.6.6.6, showing any significant changes in the work made during construction based on marked-up prints, plans and other data furnished by the Contractor to the Architect.
- .5** The Architect shall prepare, on behalf of the Owner, applications and supporting documentation for all design-related and land-use permits, variances and approvals required by state and local governmental authorities having jurisdiction over the Project (e.g., grading, utilities, zoning and encroachment). The Architect shall revise applications and supporting documentation as required to resolve comments received from such governmental authorities, provided however that:
 - (a)** The Architect's appearance as an expert, as well as the preparation of special drawings, visual aids and other materials and design work prepared solely for an appearance before local zoning boards or planning commissions shall be considered an Additional Service; and,
 - (b)** Specialized permits, such as, but not limited to, permits required by Federal agencies are not included within the scope of Basic Services unless such permits are listed in Article 14.
- .6** The Architect shall comply with the State Flood Plain Development requirements in accordance with State Law and the Manual.
- .7** The Architect shall comply with the State's requirements for telephone, data and communications equipment rooms as required by the Division of State Information Technology.
- .8** The Architect shall provide the local Building Official a complete set of Construction Documents to review and meet with the local officials to familiarize them with the proposed project.
- .9** The Architect shall meet with the local Fire Official to review proposed fire protection systems, provide the local Fire Official and the regional Deputy State Fire Marshal with a set of Construction Documents each. The Architect shall notify the local Fire Official and the regional Deputy State Fire Marshal of the time and place the fire protection and detection system(s) are to be tested.
- .10** The Architect's fire protection engineer shall review all fire protection systems shop drawings and associated hydraulic calculations for compliance with the plans and specifications in the bid documents, the National Fire Protection Association Codes, and other codes or standards indicated on the Sprinkler System Specification Sheet. After reviewing and approving the fire protection systems shop drawings, the fire protection engineer shall submit to both the State Fire Marshall and OSE a copy of the shop drawings

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along with the engineer's certification that he has reviewed and approved the shop drawings and hydraulic calculations and finds them in compliance with the plans and specifications in the bid documents, the National Fire Protection Association Codes, and other codes or standards indicated on the Sprinkler System Specification Sheet.

.11 The Architect's fire protection engineer of record shall attend the testing of the fire protection and detection system(s) and provide the Owner and OSE the following:

- (a) The installer's Certificate of Compliance with code requirements for installation and testing.
- (b) The Fire Marshal's Inspection Report
- (c) The Record of Training of users for Systems Operation.

.12 The Architect shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and inspection reports as required by the Owner to maintain a comprehensive record of the Project. The State's Project Number and Name shall be shown on all documents.

3.1.9 *Add the following Section 3.1.9:*

(Owner Initial if Applicable) **3.1.19 SERVICES PROVIDED IN TWO STAGES/CONTRACT DEPENDS ON CONTINUED FUNDING**

§ 3.1.19.1 The services to be provided by the Architect under this Agreement shall be divided into two stages. Stage 1 Services shall include all Basic Services through completion of Schematic Design Phase Services. Stage 2 Services shall include all services from the start of the Design Development Phase through the completion of all services to be provided under this Agreement.

3.1.19.2 Of the total contract price, only funding for performance of this contract through completion of Stage 1 Services has been approved under Title 2, Chapter 47 of the South Carolina Code of Laws.

3.1.19.3 The parties contemplate that upon completion of Stage 1 Services, the Joint Bond Review Committee and Budget and Control Board will approve additional funds for Stage 2 Services. Notwithstanding any other provision of this Agreement, the Owner's total obligation to pay or reimburse the Architect is limited to the amount allotted to this Agreement under Section 3.1.19.2 unless and until such time as expenditure of additional funds is approved pursuant to Title 2, Chapter 47 of the South Carolina Code of Laws and any other applicable laws and the Owner provides the Architect with written notice to proceed with Stage 2 Services.

3.1.19.4 The Architect acknowledges and agrees that upon completion of Stage 1 Services, further work will be suspended for a reasonable amount of time, as determined by the meeting schedules of the Joint Bond Review Committee and Budget and Control Board, as needed for the Agency to prepare and submit a revised Project scope and budget to the Joint Bond Review Committee and Budget and Control Board for their approval. In the event that the Joint Bond Review Committee and Budget and Control Board do not approve additional funding for the Project, the Agency intends to terminate this contract pursuant to the "Termination for Convenience" clause of this contract subject to limits on agency's obligation to pay under Section 3.1.19.3 and provided the Architect shall not be entitled to recover as damages or otherwise, anticipated profits on work not performed. The Agency shall provide the Architect notice of the lack of funding for Stage 2 Services within a reasonable time of the Agency's receiving that notice.

3.2.3 *Insert the following sentence after the first sentence in Section 3.2.3:*

This discussion shall address implementation of the State of South Carolina's Environmentally Preferred Purchasing Policy, Procurement Policy Statement No. 2009-1, issued October 15, 2009.

3.2.5 *Insert the following sentence at the end of 3.2.5:*

The Schematic Design Documents shall conform to the requirements of Chapter 5 of the Manual.

3.2.5.1 *Delete Section 3.5.1 and substitute the following:*

3.2.5.1 To the extent consistent with the Owner's directions, program, schedule and budget for the Cost of the Work, the Architect shall use environmentally responsible design practices, such as material choices, building systems selection, and building orientation, together with other considerations based on program and aesthetics, in

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developing a design. In performing these duties, the Architect shall, to the extent applicable to the Project, implement the State of South Carolina's Environmentally Preferred Purchasing Policy, Procurement Policy Statement No. 2009-1, issued October 15, 2009. The Owner may obtain other environmentally responsible design services under Article 4.

3.2.5.3 *Add the following Section 3.2.5.3*

§ 3.2.5.3 Hazardous Materials Excluded. Architect shall not design, specify or incorporate in the Drawings or Specifications for the Project any Hazardous Materials, in such manner as would violate the requirements of all existing laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site, the Work or any part of either, or would cause substantial damage or a risk of substantial damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner. For purposes of this Agreement the term "Hazardous Materials" shall include, but shall not be limited to, substances currently defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. Sec. 9601 et seq, Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, the Resource Conservation Act and Recovery Act, 42 U.S.C. Sec. 6901 et seq., and all other environmental laws, rules and regulations as all of the above may be amended from time to time.

3.2.7 *Delete Section 3.2.7 and substitute the following:*

3.2.7 The Architect shall submit the Schematic Design Documents, along with the State Design/Construction Documents Transmittal Form SE-271, to the Owner, for the Owner's approval, and to the South Carolina Office of State Engineer (OSE), for OSE's written comments, in the number requested by the Owner and OSE Project Manager. The Architect and the Architects consultants shall arrange for and participate in a table-top review of the Schematic Design Documents with the Owner and OSE.

3.3 *In the first sentence of Section 3.3.1, after the words "Schematic Design Documents," and before the words "and the Owner's authorization," insert the following words:*

OSE's written comments

Add the following sentence at the end of Section 3.3.1:

The Design Development Documents shall incorporate the accepted resolution of all Owner and OSE comments on the Schematic Design Document submittal.

3.4.1 *In the first sentence of Section 3.4.1, add the words "OSE and" before the words "Owner's approval."*

3.4.2 *In Section 3.4.2, add the words "the OSE and other" before the words "governmental authorities having jurisdiction over the Project."*

3.4.3 *Delete Section 3.4.3 and substitute the following:*

3.4.3 During the development of the Construction Documents, the Architect shall assist and coordinate with the Owner in the development and preparation of (1) bidding documents; and (2) Supplementary and other Conditions of the Contract for Construction. The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications including bidding requirements and sample forms.

3.4.3.1 *Add the following Section 3.4.3.1:*

3.4.3.1 The Architect shall, on behalf of the Owner, prepare applications and submittals for the Owner's use in obtaining all normal design-related permits and approvals required by governmental authorities having jurisdiction over the project.

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2.6.13 *Delete Section 3.4.5 and substitute the following:*

3.4.5 The Architect shall submit to the Owner and OSE for review and approval, properly completed Construction Documents, in the number and form requested, including the State Design/Construction Documents Transmittal Form SE-271 and the revised estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the OSE and Owner's approval.

3.4.6 *Add the following Section 3.4.6:*

3.4.6 The OSE and Owner's review and approval of the Construction Documents shall not relieve the Architect of its responsibility for compliance with the requirements of applicable statutes, regulations, codes and the Manual, or for design deficiencies, omission, or errors.

3.4.7 *Add the following Section 3.4.7:*

3.4.7 MAXIMUM PRACTICABLE COMPETITION

3.4.7.1 The purpose of a specification is to serve as a basis for obtaining a supply, service, information technology, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specification shall be drafted with the objective of clearly describing the State's requirements. All specifications shall be written in a non restrictive manner as to describe the requirements to be met. (R. 19-445.2140(B)). The Specifications shall be drafted so as to assure cost effective procurement of the Owner's actual needs and shall not be unduly restrictive. (Section 11-35-2730)

3.4.7.2 Unless necessary, the Architect shall not name less than three approved manufacturers for any specification which specifies a product by manufacturer name or catalogue number.

3.5.1 *Delete Section 3.5.1 and substitute the following:*

3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective bidders. Following the OSE and Owner's approval of the Construction Documents and estimate of the Cost of the Work, the Architect shall assist the Owner in (1) obtaining competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any, including obtaining and providing information to assist the Owner in making a determination of bidder responsibility; and, (4) awarding and preparing contracts for construction. During the bidding phase, all documents issued by the Architect shall be reviewed and approved by the Owner prior to issuance for compliance with state procurement requirements.

3.5.2 *In Section 3.5.2.1, add the following to the end of the sentence:*

as provided in the AIA A701, 1997 edition, as modified by the 00201, Standard Supplemental Instructions to Bidders. Before advertising for bids, the Architect shall submit to the OSE and Owner a record copy of the Bidding Documents to be issued to prospective bidders and a final estimate of construction cost.

3.5.2.2 *Add a comma at the end of Sub-Section .3 and after the comma, add the following:*

"subject to Regulation 19-445.2042;"

Delete the period at the end of Sub-Section .5 and add a semi-colon followed by the word "and."

Add the following Sub-Section .6:

.6 evaluating the responsibility of bidders.

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3.5.2.3 *Delete Section 3.5.2.3 and substitute the following:*

3.5.2.3 The Architect shall consider requests for substitutions and equivalent products, if the Bidding Documents permit substitutions and equivalent products, and shall prepare and distribute addenda identifying approved substitutions and equivalent products to all prospective bidders.

3.5.2.4 *Add the following Section 3.5.2.4:*

3.5.2.4 If the lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by less than ten percent, and the Owner elects to award the Contract, the Architect shall, without additional charge to the Owner, assist in negotiations to reduce the bid to an amount within the Owner's budget for the Cost of the Work, but not more than 10% below the Owner's budget for the Cost of the Work.

3.5.2.5 *Add the following Section 3.5.2.5:*

3.5.2.5 If the lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by more than ten percent and the Owner elects to continue the Project, the Architect shall, without additional charge to the Owner, modify the Contract Documents as necessary to bring the Project within the Owner's budget for the Cost of the Work. The Architect shall be responsible for all its costs associated with the redesign and rebidding of the Project, including the reproduction of revised documents and fees for any new or revised permits based on the revised plans. However, the Architect shall not be required to perform such additional services at no cost to the Owner if the unfavorable bids are the result of conditions beyond the Architect's reasonable control.

3.5.2.6 *Add the following Section 3.5.2.6:*

3.5.2.6 If the Owner elects to terminate the Project, then this Contract is terminated in accordance with Article 9.

3.5.3 *Delete Section 3.5.3 in its entirety (including subsections 3.5.3.1 through 3.5.3.3) and insert the word "reserved."*

3.6.1.1 *In Section 3.6.1.1, delete the period after the word "Construction" at the end of the first sentence and insert a comma. After the comma insert the following:*

"unless otherwise provided in this Agreement. The Architect shall perform all duties and obligations that are assigned to the Architect in the General Conditions unless such duties or obligations on the part of the Architect are expressly waived in this Agreement.

3.6.1.2 *After the opening words "The Architect Shall" in Section 3.6.1.2, insert the following words:*

be a representative of and

3.6.1.3 *Delete Section 3.6.1.3 and substitute the following:*

3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and, with the exception of the duties set forth in Section 3.6.6.5, terminates twenty-one days after the Architect issues the final Certificate for Payment.

3.6.2.1 *Delete Section 3.6.2.1 and substitute the following:*

3.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of construction, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine, in general, if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall, at least once a month, submit a written report to the Owner to keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and to report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies in the Work.

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3.6.2.1.1 *Add the following Section 3.6.2.1.1:*

3.6.2.1.1 Site visits shall be made by representatives of the Architect and its consultants who are knowledgeable of the Project requirements and competent in each discipline having work in current progress. These representatives shall visit the site at intervals to assure conformance with the design shown in the Contract Documents and to observe, as experienced and qualified design professionals, the progress and quality of the various aspects of the Contractor's Work.

3.6.2.2 *In Section 3.6.2.2, insert a comma after the word "Documents" at the end of the first sentence and insert the following after the comma and before the period:*

unless the Owner decides otherwise

3.6.2.3 *Delete the second sentence of Section 3.6.2.3 and substitute the following:*

The Architect's response to such requests shall be made in writing with reasonable promptness, but no more than within fourteen days of receipt of the request by the parties .

3.6.2.4 *In the second sentence of Section 3.6.2.4, delete the word "and" after the word "either" and insert a period. After the inserted period, insert the following:*

Except in the case of interpretations resulting in omissions, defects, or errors in the Instruments of Service or perpetuating omissions, defects, or errors in the Instruments of Service, the Architect

3.6.2.5 *In Section 3.6.2.5, insert a comma after the word "render" and insert the following after the comma:*

with reasonable promptness,

3.6.3.1 *In Section 3.6.3.1, delete everything after the first sentence and substitute the following:*

The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to results of subsequent tests and inspections, (2) to correction of minor deviations from the Contract Documents prior to completion, and (3) to specific qualifications expressed to the Owner in writing by the Architect prior to issuance of a Certificate for Payment.

3.6.4.1 *In Section 3.6.4.1, delete everything after the word "promptness" except the period.*

3.6.4.2 *In Section 3.6.4.2, insert the word "Contractor's" before the word "submittal" and after "Architect-approved".*

3.6.4.4 *In the fourth sentence of Section 3.6.4.4, delete the words "within any time limits agreed upon, or otherwise."*

3.6.4.5 *In Section 3.6.4.5, insert the words "detailed, chronological" before the word "record."*

3.6.5.1 *In Section 3.6.5.1, delete everything after the first sentence and substitute the following:*

Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives, with supporting technical and cost documentation and data for the Owner's approval and execution in accordance with the Contract Documents. Prior to preparing any Modification, the Architect shall (a) request from the Contractor any substantiating data required by Article 7 of the General Conditions of the Contract for Construction, including cost or pricing data reference in Section 7.6.1, as applicable, and (b) assist the Owner in a thorough review of the information provided.

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3.6.5.1.1 Add the following Section 3.6.5.1.1:

3.6.5.1.1 For Construction Change Directives only, when the Contractor does not provide properly itemized cost information in accordance with Article 7 of the General Conditions of the Contract for Construction, the Architect shall, for the Owner's information and as an initial basis for establishing the upper limit of compensation to the Contractor, provide the itemization and shall use the labor, material and equipment unit costs as listed in the most current issue of the "Means Construction Cost Data" series of cost guides, adjusted for local cost conditions. The Architect's effort required to prepare the cost itemization shall be considered as an Additional Service.

6.6.5.2 In Section 3.6.5.2, insert the words "detailed, chronological" after the word "maintain" and before the word "records."

3.6.6.1.1 Add the following Section 3.6.6.1.1:

3.6.6.1.1 The Architect and the Architect's consultants and engineers shall provide one Substantial Completion Inspection, and one Final Completion Inspection as a part of Basic Services. Where projects have been designed for phased completion, the Architect and the Architect's consultants and engineers shall provide one Substantial Completion Inspection and one Final Completion Inspection for each phase of the Project. If additional inspections are required, payment to the Architect shall be adjusted in accordance with Section 4.3.

3.6.6.5 Delete Section 3.6.6.5 and substitute the following:

3.6.6.5 During the tenth month after the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to inspect the Project and review the facility operations and performance. The Architect shall prepare a report indicating outstanding work or deficiencies in the Work to be corrected by the Contractor. The Architect shall provide the report to the Owner and OSE and, at the Owner's direction, to the Contractor. Upon the Owner's request and as an Additional Service, the Architect shall assist the Owner in taking necessary action to see that the deficiencies are corrected.

3.6.6.6 Add the following Section 3.6.6.6:

3.6.6.6 The Architect shall prepare, from Contractor supplied-information, and provide to the Owner a set of reproducible Record Plans showing all significant changes in the work made during construction, as required by the Manual. Plans shall be stamped as "Record Plans" This set of reproducible documents shall be in addition to computer media plans required in Article 14, if any.

3.7 Add the following Section 3.7:

3.7 COORDINATION OF SERVICES. Architect shall be fully responsible for coordinating all Architect's Basic and Additional Services required under this Agreement regardless of whether performed by its own employees or by consultants hired by Architect to perform a portion of its services ("Subconsultants"). The purpose of such coordination is to ensure that the services required are performed in a reasonably efficient, timely and economical manner. Architect shall be responsible to Owner for the services furnished to Architect by any Subconsultant to the same extent as if Architect had furnished the service itself. Architect also agrees to coordinate, and resolve any inconsistencies in its work and the work of its subconsultants. All of Architect's contracts with Subconsultants shall be in writing, signed by both parties, and shall include the following provision: "The Owner is intended to be a third party beneficiary of this agreement."

3.8 Add the following Section 3.8:

3.8 COMPLIANCE WITH LAWS. Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, including but not limited to all zoning, restrictions or requirements of record, building, occupancy, environmental, disabled persons accessibility and land use laws, requirements, regulations and ordinances relating to the construction, use and occupancy of the Project (collectively "Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents.

ARTICLE 12 - OTHER CONDITIONS OR SERVICES AIA B101-2007**ARTICLE 4 ADDITIONAL SERVICES****4.1** *Delete the first sentence of Section 4.1 and substitute the following:*

Unless otherwise provided in this agreement, additional services listed below and not identified as a Basic Service are not included in Basic Services but may be required for the Project.

In the table of additional services set forth in Section 4.1, insert the words "Included in Basic Services" into the second column beside the following listed services:

§ 4.1.7 Civil engineering

§ 4.1.15 As-constructed record drawings

4.3.1.3 *In Section 4.3.1.3, insert the words "revisions or changes to" after the word "or" and before the words "official interpretations."***4.3.1.5** *Delete the language of Section 4.3.1.5 and substitute the word "reserved."***4.3.1.9** *Delete the language of Section 4.3.1.9 and substitute the word "reserved."***4.3.1.11** *Delete the language of Section 4.3.1.11 and substitute the word "reserved."***4.3.2** *Delete the first sentence of Section 4.3.2 and substitute the following:*

To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, promptly notify the Owner, and explain the facts and circumstances giving rise to the need.

4.3.2.1 *In Section 4.3.2.1, insert the following after the word "Architect":*

where such review causes significant disruption to the Architects normal operations

4.3.2.3 *In Section 4.3.2.3, insert the following after the word "Service":*

provided such Change Orders and Change Directives are not the result of omissions, defects, or errors in the Instruments of Service

4.3.2.4 *Delete the language of Section 4.3.2.4 and substitute the word "reserved."***4.3.2.6** *Delete Section 4.3.2.6 and substitute the following:*

4.3.2.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services, other than those required in Section 3.6.6.5, 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier provided the delay in Substantial Completion of the Work is for causes beyond the control of the Architect, the Architect's consultants, or anyone for which either is responsible.

4.3.3 *Delete the language of Section 4.3.3 and substitute the word "reserved."***4.3.4** *Delete the language of Section 4.3.4 and substitute the word "reserved."*

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ARTICLE 5 OWNER'S RESPONSIBILITIES

5.1 *Delete the last sentence of Section 5.1.*

5.2 *Delete the last two sentences of Section 5.2 and insert the following:*

If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect of such increase or decrease and the corresponding changes in the Project's scope and quality with reasonable promptness.

5.2.1 *Add the following Section 5.2.1*

5.2.1 The Owner shall review the Architect's documents and the estimate of Cost of the Work for each phase (Schematic, Design Development, Construction Documents, and Bid Documents) with reasonable promptness and shall submit its written approval to the Architect and OSE.

5.6 *Delete the last sentence of Section 5.6 and substitute the following:*

The Owner shall require that its consultants maintain professional liability insurance on the same basis as required of the Architect.

5.9 *Delete Section 5.9 and substitute the following:*

5.9 The Owner, with reasonable promptness, shall provide written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

5.10 *Delete Section 5.10 and substitute the following:*

The Owner will endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall notify the Architect of any direct communications that may affect the Architect's services within a reasonable time.

5.13 *Add the following Section 5.13:*

5.13 Notwithstanding anything to the contrary contained in this Agreement, Owner's review and approval of any and all documents or other matters required herein shall not be construed to be for the purpose of determining the Architect has met his professional duty of care in the preparation of the Instruments of Service.

5.14 *Add the following Section 5.14:*

5.14 DECISIONS BY THE OWNER

Any reference in the Contract Documents to the Owner taking action or rendering a decision with a "reasonable time" or "reasonable promptness" is understood to mean no more than fourteen days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

ARTICLE 6 COST OF THE WORK

6.3 *Delete Section 6.3 and substitute the following:*

6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; and, in consultation with, and subject to approval by, the Owner, to make reasonable adjustments in the program and scope of the Project as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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- 6.5** *In Section 6.3, insert a comma after the words “Architect shall” and insert the following after the comma:*

at no additional cost,

Add the following sentence to the end of Section 6.3:

However, the Architect shall not be required to perform such services at no cost to the Owner if the unfavorable estimate is the result of conditions beyond the Architect’s reasonable control.

- 6.6** *Delete Section 6.6 in its entirety and substitute the following:*

6.6 If the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid, the Owner, when permitted by and in accordance with applicable state law, may,

- .1** give written approval of an increase in the budget for the Cost of the Work and proceed with award of a contract;
- .2** authorize rebidding of the Project without change not less than 90 days after the date of bid opening ;
- .3** terminate in accordance with Section 9.5;
- .4** in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work and rebid the Project; or
- .5** With the Architect’s assistance, negotiate a contract with the lowest responsive and responsible bidder.

- 6.7** *In Section 6.7, delete the article number “6” at the end of the last sentence substitute the number “6.6.4.”*

- 6.8** *Add the following Section 6.8:*

6.8 If the Owner chooses to proceed under Section 6.6.1 or 6.6.2, the Architect shall not receive additional compensation for the increase in budget or delay in rebidding.

- 6.9** *Add the following Section 6.9:*

6.9 If the Owner chooses to proceed under Section 6.6.5, the Architect shall not be entitled to additional compensation for any effort or additional work necessary to bring the contract within the Owner’s budget for the Cost of the Work.

ARTICLE 7 COPYRIGHTS AND LICENSES

- 7.1** *Delete the first sentence of Section 7.1 and substitute the following:*

The Architect warrants that in transmitting Instruments of Service, or any other information, the Architect is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

- 7.2** *Delete the first sentence of Section 7.2 and substitute the following:*

The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

- 7.3** *Delete Section 7.3 and substitute the following:*

7.3 Upon execution of this Agreement, the Architect grants to the Owner a perpetual, irrevocable, nonexclusive license to use and authorize others to use, at any time and in any manner, the Architect’s Instruments of Service for purposes including, but not limited to, constructing, using, maintaining, altering and adding to the structures which are the subject of the Instruments of Service at the general location of the site of the Project, and for any other use required by law. The Architect shall obtain and provide to the Owner licenses from the Architect’s

ARTICLE 12 - OTHER CONDITIONS OR SERVICES AIA B101-2007

consultants that have terms identical to those that obligate the Architect to the Owner as expressed above in this subsection .

7.3.1 *Delete the second sentence of Section 7.3.1 and substitute the following:*

The Owner, to the extent permitted by law, further agrees to waive any claims against the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1.

Add to the end of the last sentence of Section 7.3.1 the words "or pays the licensing fee stated in Section 11.9".

7.4 *Delete the language of Section 7.4 and substitute the word "reserved."*

7.5 *Add the following Section 7.5:*

7.5 Architect shall not use or allow to be used the Drawings, Specifications and reports or the unique design aspects of this Project for any other project, without the prior written approval of Owner. Architect may re-use standard specification texts and details.

7.6 *Add the following Section 7.6:*

7.6 Upon the filing by Architect of a petition in bankruptcy or upon any other proceeding or action by or against the Architect under the relevant law on bankruptcy, this Agreement shall be governed by Section 365(n) of the U.S. Bankruptcy Code, if applicable. If any person seeks to reject this Agreement pursuant to bankruptcy law, Owner shall have the option of using the Instruments of Service for either the original term of this Agreement or a period of five years after rejection is requested.

ARTICLE 8 CLAIMS AND DISPUTES

8.1.1 *Delete Section 8.1.1 and substitute the following:*

8.1.1 All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Architect agrees that any act by the State regarding the Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. Architect consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Architect by certified mail (return receipt requested) addressed to Architect at the address provided on Exhibit A or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

8.1.1.1 *Add the following Section 8.1.1.1:*

8.1.1.1 Architect agrees that any act by the State regarding this Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase, "the State" includes any governmental entity transacting business with the Architect pursuant to the Agreement and the South Carolina Budget & Control Board.

8.1.2 *Delete the first sentence of Section 8.1.2 and substitute the following:*

LIMITATIONS ON LIABILITY

§ 8.1.2.1 To the extent damages are covered and paid for by property insurance provided by the Contractor, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction.

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8.1.3 *Delete Section 8.1.3 and substitute the following:*

8.1.3 Notwithstanding any other provision of this Agreement (including Sections 2.6 and 2.7), but subject to a duty of good faith and fair dealing, the Architect and Owner waive claims against each other for listed damages arising out of or relating to this Agreement. Listed Damages are (1) damages incurred by the Owner for rental expenses, for losses of use of the Work, except to the extent such losses are covered by insurance or occur after acceptance of the certificate of substantial completion, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, and for attorney's fees, insurance and interest (excluding post-judgment); and, (2) damages incurred by the Architect for principal office expenses and overhead, including, but not limited to, the compensation of personnel stationed there, rent, utilities and office equipment; for losses of financing, business and reputation, for loss of profit, for attorney's fees, insurance and interest (excluding post-judgment), and for claims made by the Architect's consultants for the types of damages the Architect has waived as against the Owner. This mutual waiver is applicable, without limitation, to all listed damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

8.1.4 *Add the following section 8.1.4:*

8.1.4 WAIVER OF ARCHITECT CLAIMS AGAINST THE CONTRACTOR. Notwithstanding any other provision of this Agreement, but subject to a duty of good faith and fair dealing, the Architect waives all claims against both the Contractor and any of the Contractor's subcontractors (at any tier) for Listed Damages arising out of or relating to this Contract. The Listed Damages are damages incurred by the Architect for principal office expenses and overhead, including, but not limited to, the compensation of personnel stationed there, rent, utilities and office equipment; for losses of financing, business and reputation, for loss of profit, for attorney's fees, insurance and interest (excluding post-judgment), and for claims made by the Architect's consultants for the types of damages the Architect has waived as against the Owner.

8.2.1 *Delete the language of Section 8.2.1 and insert the word "reserved."*

8.2.2 *Delete Section 8.2.2 and substitute the following:*

8.2.2 If either party files a request for resolution of a contract controversy with the Chief Procurement Officer for Construction (CPOC) pursuant to Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, as amended, the Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation using a mediation process and mediator mutually agreeable to both. The Owner and Architect shall act in good faith in selecting and agreeing on mediation procedures and a mediator. If the Owner and Architect cannot in good faith agree on mediation procedures and/or a mediator, they shall use procedures and/or a mediator appointed by the CPOC. Mediation shall proceed in advance of Administrative Review by the CPOC.

8.2.3 *Delete the last sentence of Section 8.2.3 and substitute the following:*

Agreements reached in mediation shall be approved by the CPOC.

8.2.4 *Delete Section 8.2.4 and substitute the following:*

8.2.4 If the parties cannot resolve a dispute through mediation pursuant to this Section 8.2, the parties shall so notify the CPOC and proceed in accordance with the procedures set forth in Article 17 of the South Carolina Code of Laws, as amended.

8.3 *Delete the language of Section 8.3 in its entirety including all of its Sub- Sections and substitute the word "reserved."*

8.4 *Add the following Section 8.4:*

8.4 Continuing Obligations During Disputes

In the event of any Controversy between Owner and Architect under this Agreement, including but not limited to, whether or not any services Owner expects Architect to perform are within the scope of Basic Services or any

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dispute as to whether or not Architect is entitled to additional compensation for any Work requested, Architect shall continue to proceed diligently with the performance of its services under this Agreement pending resolution of the dispute, and Owner agrees to pay Architect in accordance with this Agreement for all services rendered by Architect which are not the subject of the Controversy.

ARTICLE 9 TERMINATION OR SUSPENSION

9.1 *Delete Section 9.1 and substitute the following:*

9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option (subject to Section 8.4), cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give written notice to the Owner. Unless the Architect receives payment in full for undisputed amounts within twenty-one days of the Owner's receipt of the Architect's notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all undisputed sums due prior to suspension and any direct expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

9.2 *Delete the last sentence of Section 9.2 and substitute the following:*

The Architect's time schedules shall be equitably adjusted. If the suspension exceeded 90 days, the Architect's fees for the remaining services shall be equitably adjusted.

9.3 *In Section 9.3, delete the word "seven" and substitute the number "14."*

9.4 *In Section 9.4, delete the word "seven" and substitute the number "21."*

9.5 *In Section 9.5, delete the word "seven" and substitute the number "21."*

9.7 *Delete Section 9.7 and substitute the following:*

9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for reasonable profit on the value of the services performed at the Owner's request as a result of the termination.

9.8 *Delete Section 9.8 and substitute the following:*

9.8 In the event of suspension or termination for convenience, upon request of Owner and payment of all fees pursuant to this Article, Architect shall promptly provide Owner with reproducible drawings and computer tapes or disks of all documents completed or in progress on the date of termination. The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 *Delete Section 10.1 and substitute the following:*

10.1 The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.

10.2 *Add the following to the end of Section 10.2:*

Any reference in this document to the Agreement between the Owner and Contractor, AIA Document A101, or some abbreviated reference thereof, shall mean the AIA A101, 2007 Edition as modified by OSE Form 00501 – Standard Modification to Agreement Between Owner and Contractor. Any reference in this document to the

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General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean the AIA A201, 2007 Edition as modified by OSE Form 00811 – Standard Supplementary Conditions.

10.3 *Add the following to the end of Section 10.3:*

Regulation 19-445.2180 provides as follows: "No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, the head of a purchasing agency, or the designee of either; provided, however, that a contractor may assign monies receivable under a contract after due notice from the contractor to the State."

10.5 *Delete Section 10.5 and substitute the following:*

10.5 The Contractor shall be entitled to performance and enforcement of obligations under the Agreement intended to facilitate performance of the Contractor's duties. Otherwise, nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

10.7 *Delete Section 10.7 and substitute the following:*

10.7 Subject to the Owner's written approval, which shall not be unreasonably withheld, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. Architect shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Owner.

10.8 *In Section 10.8, insert a comma after "the receiving party shall" and insert the following after the comma:*

to the extent permitted by law,

10.9 *Add the following Section 10.9:*

10.9 ARCHITECT'S RECORDS

Upon request, the Architect shall provide the Owner with copies of all documents, in their original form, in the Architect's possession that regard the Project.

10.10 *Add the following Section 10.10:*

10.10 PUBLICITY

Architect shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Owner.

10.11 *Add the following Section 10.11:*

10.11 ECONOMIC CONFLICT OF INTEREST

A contractor shall not have or exercise any official responsibility regarding a public contract in which the contractor, or a business with which he is associated, has an economic interest. A person working for contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If contractor is asked by any person to violate, or does violate, either of these restrictions, contractor shall immediately communicate such information to the procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in Section 8-13-100.

ARTICLE 12 - OTHER CONDITIONS OR SERVICES AIA B101-2007**10.12** *Add the following Section 10.12:***10.12 DRUG-FREE WORKPLACE**

The Architect certifies to the Owner that Architect will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

10.13 *Add the following Section 10.13:***10.13 FALSE CLAIMS**

According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

10.14 *Add the following Section 10.14:***10.14 NON-INDEMNIFICATION**

Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations. (§ 11-9-20) It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (§ 11-1-40)

10.15 *Add the following Section 10.15:***10.15 RETENTION AND AUDIT OF ARCHITECT'S RECORDS**

The Architect and the Architect's Consultants shall comply with all applicable obligations of §11-35-2220 of the SC Code of Laws, as amended.

10.16 *Add the following Section 10.16:***10.16 AUDIT OF COST OR PRICING DATA**

The Owner shall be entitled, at reasonable times and places, to audit the books and records of the Architect and the Architect's Consultants who have submitted cost or pricing data pursuant to either this Contract or to §11-35- 1830 to the extent that such books and records relate to such cost or pricing data. If any cost or pricing data is required for this Contract, the Architect and the Architect's Consultants shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Chief Procurement Officer.

10.17 *Add the following Section 10.17:***10.17 CONTRACT AUDIT**

If this Contract or any Modification (other than a firm fixed price contract) is negotiated, the Owner shall be entitled to audit the books and records of the Architect and the Architect's Consultants to the extent that such books and records relate to the performance of the Contract or any Modification. Such books and records shall be maintained by the Architect for a period of three years from the date of final payment under the Contract and by any Consultants for a period of three years from the date of final payment under the Architect's contract with the Consultant, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. As used in this paragraph, the phrase "Chief Procurement Officer" shall have the definition given that phrase in SC Code Ann. §11-35-310.

10.18 *Add the following Section 10.18:***10.18 FORCE MAJEURE**

In the event Architect is hindered, delayed or prevented from performing its obligations under this Agreement as a result of any fire, flood, landslide, tornado or other act of God, malicious mischief, theft, strike, lockout, other

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labor problems, shortages of material or labor, or any other cause beyond the reasonable control of Architect, the time for completion of Architect's work shall be extended by the period of resulting delay.

10.19 Add the following Section 10.19:

10.19 NO WAIVER

Owner does not waive any prior or subsequent breach of the terms of the Agreement by making payments on the Agreement, by failing to terminate the Agreement for lack of performance, or by failing to strictly or promptly insist upon any term of the Agreement. Only a procurement officer has actual authority to waive any of the Owner's rights under this Agreement. Any waiver must be in writing.

10.20 Add the following Section 10.20:

10.20 HEADINGS

The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

11 COMPENSATION

11.1 In Section 11.1, insert the following after the parenthetical "(Insert amount of, or basis for, compensation.)":

Stage 1 Services (through completion of the Schematic Design Phase): _____
 Stage 2 (Design Development Phase through completion of all Work of the Agreement): _____

11.4 Delete the language of Section 11.4 and substitute the word "reserved."

11.8.1.1 In Section 11.8.1.1, insert a comma after the word "subsistence" and insert the following after the comma:

subject to Section 11.8.3

11.8.1.2 In Section 11.8.1.2, insert the word "project" before the word "dedicated."

11.8.1.6 Delete the language of Section 11.8.1.6 and substitute the word "reserved."

11.8.1.10 Delete the language of Section 11.8.1.10 and substitute the word "reserved."

11.8.1.11 Delete the language of Section 11.8.1.11 and substitute the word "reserved."

11.8.2 Delete Section 11.8.2 and substitute the following "reserved."

11.8.2 For Reimbursable Expenses the compensation shall be the actual costs incurred by the Architect and the Architect's consultants.

11.8.3 Add the following Section 11.8.3:

11.8.3 Unless authorized in writing by the Owner prior to incurring the expense, no expense for transportation, travel, or subsistence will be reimbursable to the extent the expense exceeds the amount for which a state employee would be reimbursed under the Travel Regulations. Travel Regulations means the Budget and Control Board's Regulations For Reimbursement For Travel And Subsistence Expenses (Travel Regulations), as they appear in the STARS Manual published by the Comptroller General's Office.

[<http://cg.sc.gov/agencyinfo/disbregs/travel.htm#0>] There shall be no charge for time spent in travel.

11.10.1 In Section 11.10.1, insert the following in the space provided for setting for a dollar amount:

zero dollars (\$ 0.00)

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11.10.2 *Delete Section 11.10.2 and substitute the following:*

11.10.2 Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments due to the Architect and unpaid under this Agreement shall bear interest only if and to the extent allowed by Title 29, Chapter 6, Article 1 of the South Carolina Code of Laws. Amounts due to the Owner shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.

11.10.3 *Delete Section 11.10.3 and substitute the following:*

11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty. The Owner shall have all of its common law, equitable, and statutory rights of set-off.

11.10.4 *Insert the following phrase at the beginning of the sentence in Section 11.10.4:*

In addition to the sections of Article 10,

Article 13 ____ is ____ is not attached.
(check one, as appropriate)

For Promulgation